

ORDINANCE NO. 2012-_____

AN ORDINANCE ESTABLISHING A MUNICIPAL ETHICS COMMISSION FOR
THE CITY OF SOUTH SALT LAKE

Whereas, the Utah State Legislature 2012 General Session passed third Substitute Senate Bill 180 providing for the establishment of municipal ethics commissions;

Whereas, the City Council of South Salt Lake desires to provide residents and business owners a process to file ethics complaints against City Council members or against the Mayor;

Whereas, the City Council desires to establish a Municipal Ethics Commission for the purpose of receiving, reviewing, and reporting ethics complaints;

Whereas, the City Council desires to receive from a Municipal Ethics Commission recommendations regarding action against any elected official where the Commission finds a violation of the Municipal Officers' and Employees' Ethics Act;

Be it ordained, therefore, by the City Council of the City of South Salt that:

Chapter 2.10 Municipal Ethics be added to the South Salt Lake municipal code as follows:

Chapter 2.10

Municipal Ethics

2.10.010 - Purpose.

The purpose of this chapter is to prevent improper influence, avoid the appearance of impropriety, and prohibit elected officers from receiving unjust financial gain from public service. It also seeks to increase public confidence by assuring that governmental actions are taken ethically.

2.10.020 -- Definitions.

A. For the purposes of this chapter, "Commission" means the Municipal Ethics Commission formed pursuant to Section 2.10.050 of this chapter.

B. For the purposes of this chapter, "elected officers" includes only the members of the South Salt Lake City Council and the Mayor.

2.10.030 - Municipal Officers' and Employees' Ethics Act.

A. Elected officers of the City of South Salt Lake are required to comply with the Municipal Officers' and Employee's Ethics Act (Utah Code 10-3-1301 et seq) as amended, which is incorporated herein by reference.

B. Included in the Municipal Officers' and Employees' Ethics Act is the obligation of elected officers to:

1. Not disclose or improperly use private, controlled, or protected information acquired by them by reason of their position or in the course of their duties in order to further substantially their personal economic interest or to secure special privileges or exemptions for the elected officer or others; and avoid the use of their office for personal benefit;
2. Not use or attempt to use their position to further substantially their personal economic interest or secure special privileges for the elected officer or for others;
3. Not knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the elected officer or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:
 - a. would tend improperly to influence a reasonable person in the elected officer's position to depart from the faithful and impartial discharge of the person's public duty; or
 - b. the elected officer knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the elected officer for official action taken.

C. The Municipal Officers' and Employees' Ethics Act also requires public disclosures and filings in certain circumstances as described in the Act, including:

1. Where an elected officer receives or agrees to receive compensation for assisting any person or business entity in any transaction involving the City of South Salt Lake;
2. Where an elected officer is an officer, director, agent, or employee or the owner of a substantial interest in any business entity which is subject to regulation by the City of South Salt Lake;
3. Where the elected officer is an officer, director, agent, employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the City of South Salt Lake; and

4. Where an elected officer has a personal interest or investment which creates a conflict between the elected officer's personal interests and the elected officer's public duties.

2.10.040 - City Attorney Advisory Opinions.

A. Elected officers of the City of South Salt Lake may request of the City Attorney an advisory opinion concerning the application of the Municipal Officers' and Employees' Ethics Act. The City Attorney shall accept and process these advisory opinion requests. As soon as practicable, but not later than thirty (30) days after the City Attorney receives a request for an advisory opinion, the City Attorney shall render a written opinion to the Mayor and to the City Council. All advisory opinions shall be available for public review, but may be in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved or to protect personal privacy interests.

B. An advisory opinion rendered by the City Attorney, until amended or revoked by the City Attorney, shall be a defense in any action brought by the City against the elected official and shall be binding on the City in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith upon it, unless material facts were omitted or misstated by the person requesting the opinion.

2.10.050 - Municipal Ethics Commission.

A. The City of South Salt Lake establishes a Municipal Ethics Commission pursuant to Utah Code § 10-3-1311. The City's administrative law judge shall act as the City's Commission.

B. The Office of the City Attorney shall provide the Commission such administrative or other support, as requested by the Commission.

2.10.060 - Filing of Ethics Complaints with Commission.

A. A complaint may only be filed with the Commission under the following conditions:

1. The complaint must be against an elected officer of the City of South Salt Lake who is currently serving in their elected position and allege a violation of the Municipal Officers' and Employees' Ethics Act;
2. The complaint must be filed with the City Recorder of the City of South Salt Lake on behalf of the Commission;
3. The complaint must be made by either:
 - a. two or more registered voters who reside within the boundaries of the City of South Salt Lake; or

- b. two or more registered voters who pay a fee or tax to the City of South Salt Lake; or
 - c. one or more registered voters who reside within the boundaries of the City of South Salt Lake plus one or more registered voters who pay a fee or tax to the City of South Salt Lake;
- 4. The complaint must be based upon direct evidence or sworn statements by one or more people with actual knowledge of the facts and circumstances supporting the alleged ethics violation;
- 5. The complaint may not be filed during the sixty (60) calendar days immediately before a municipal primary election, if the accused elected officer is a candidate in the primary election;
- 6. The complaint may not be filed during the sixty (60) calendar days immediately before a municipal general election in which the accused elected officer is a candidate, unless the accused elected official is unopposed in the election;
- 7. The complaint must be in writing and contain:
 - a. the name and position of the elected officer alleged to be in violation;
 - b. the name, address, and telephone number of each individual who is filing the complaint;
 - c. a description of each alleged violation of the Municipal Officers' and Employees' Ethics Act, including a reference to the section of the Act alleged to have been violated;
 - d. with reasonable specificity, evidence supporting each allegation, which shall be provided by copies of official records, documentary evidence, or affidavits that include the required information;
 - e. a list of witnesses that a complainant wishes to have called or interviewed, including for each witness: the name, address, and, if available, one or more telephone numbers of the witness; a brief summary of the testimony to be provided by the witness; a specific description of any documents or evidence a complainant desires the witness to produce;
 - f. a statement that each complainant:
 - 1) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;

2) believes that the complaint is submitted in good faith and not for any improper purpose such as harassing the named elected officer, causing unwarranted harm to the accused elected officer's reputation, or causing unnecessary expenditure of public funds; and

3) believes the allegations contained in the complaint to be true and accurate.

g. a statement with the signature of each complainant.

B. Upon receipt of any ethics complaint, the City Recorder shall immediately refer the complaint to the Commission. The City Recorder shall not notify or inform any other person of the filing of the complaint.

C. A person filing a complaint under this chapter is not entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings.

2.10.070 - Privacy.

A. Once an ethics complaint has been filed with the City Recorder, neither the City Recorder, the Commission, nor any City employee may disclose the existence of the complaint, any response to the complaint, or any information concerning the alleged ethics violation that is the subject of the complaint, unless otherwise provided in this chapter.

B. Nothing in the restrictions above may be construed to hinder or prevent a person or the City Attorney of South Salt Lake from disclosing the facts or allegations about potential criminal violations to a law enforcement authority.

C. Nothing in this section may be construed to hinder or prevent the named elected officer from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the Commission.

D. Nothing in this section may be construed to hinder or prevent any person from disclosing public records.

E. If any employee or officer of the City publicly discloses any private information, appropriate disciplinary action may be taken against such individual.

F. If a complainant publicly discloses any private records or information obtained from private records, the Commission may summarily dismiss the complaint without prejudice.

G. All records received by or generated by or for the Commission are private and not subject to disclosure or release, except for the Commission's summary findings and

recommendation for the City Council or any document that is classified as public in accordance with Title 11, Chapter 49 of the Utah Code (Utah Code 63G-1-302).

2.10.080 – Initial Review of Complaint.

A. Within ten (10) business days after receipt of an ethics complaint, the Commission shall examine the complaint to determine if it is in compliance with the filing requirements of this chapter.

B. If the Commission determines that the complaint does not comply with the filing requirements of this chapter, the Commission shall return the complaint to the first complainant named on the complaint with a statement detailing the reason(s) for non-compliance. At the same time, the Commission shall notify the Chair of the City Council and the City Attorney that a complaint filed against an unidentified elected officer has been returned for non-compliance with this chapter and the fact that a complaint was filed and returned shall be kept confidential until the Commission submits its annual summary report to the City Council and to the Mayor. If a complaint is returned by the Commission, the complainants may file another complaint if the new complaint independently meets the filing requirements of this chapter.

C. If the Commission determines that the complaint complies with the filing requirements of this chapter, the Commission shall:

1. Accept the complaint;
2. Promptly forward the complaint to the elected officer who is named in the complaint, together with directions for providing a response to the Commission;
3. If appropriate, request assistance from the Office of the City Attorney; and
4. Notify the complainants, the named elected official, the City Recorder, and the employees in the Office of the City Attorney of the privacy requirements of this chapter.

D. At its discretion, the Commission may determine whether the subject of the complaint should be investigated by a law enforcement agency.

E. If the Commission learns that the subject of the complaint is under criminal investigation, the Commission may suspend its review of the complaint pending the resolution of the criminal investigation.

F. The named elected officer shall have the right to present an answer to the complaint. The answer may contain statements, arguments, and evidence. The answer must be filed within ten (10) business days from the complaint was forwarded to and received by the elected officer.

G. The Commission shall dismiss an ethics complaint if:

1. The named elected officer resigns or is removed from office with the City of South Salt Lake;
2. The named elected officer is charged with a criminal violation of the Municipal Officers' and Employees' Ethics Act where the facts and allegations presented in the ethics complaint assert substantially similar facts and allegations as those asserted in the criminal charges; or
3. The allegations in the complaint, if assumed to be true, do not state a violation of the Municipal Officer's and Employees' Ethics Act.

2.10.090 – Consideration of Complaint after Acceptance.

A. After acceptance of a complaint, the Commission has the discretion to:

1. Conduct a confidential, independent administrative investigation of the complaint;
2. Refer the matter to an independent non-criminal investigator for fact finding and investigation and consider the confidential report of the investigator;
3. Conduct a hearing in accordance with subsection B of this section; or
4. Any combination of the above.

B. If the Commission uses a hearing to review the complaint, the Commission shall:

1. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments;
2. Close the hearing to the public;
3. Allow the complainants and the named elected official to retain legal representation, at their discretion; and
4. Provide administrative subpoenas pursuant to its subpoena powers, as provided in Chapter 22 of Title 2 of this Code.

C. For any hearing the Commission must provide a notice to the first named complainant and the named elected officer at least five (5) business days prior to the hearing.

D. The Commission shall determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a City Attorney ethics advisory opinion. The Commission shall take into consideration efforts by the named elected

official to seek legal direction regarding the subject matter of the complaint and any good faith efforts by the named elected official in response to legal advice received.

E. The Commission shall ensure that a record of any Commission meeting or hearing is made, which shall include:

1. Audio recordings, if any;
2. Official summaries or minutes taken during the meeting or hearing;
3. Copies of all documents or other items admitted into evidence or considered by the Commission;
4. Copies of a document or written order or ruling issued by the Commission; and
5. Any other information the Commission deems relevant to the findings and recommendation.

2.10.100 – Contempt Powers

A. The Commission may hold a person in contempt if the person:

1. Refuses to answer a question, without legal justification, after being directed by the Commission to answer; or
2. Fails to comply with a subpoena issued by the Commission.

B. Upon finding a person in contempt, the Commission shall report the person to the Third District Court and request a warrant of attachment or order to show cause, as provided in Utah Code § 78B-6-313.

2.10.110 - Request by Elected Officer for Legal Representation.

A. The named elected officer may request that the City provide a legal defense if the complaint arises from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority.

B. The City Attorney may arrange for such legal defense, where appropriate.

2.10.120 - Determination by Commission.

A. After review of the complaint, the Commission shall determine whether there is clear and convincing evidence supporting a violation of the Municipal Officers' and Employees' Act by the named elected officer. If there are multiple alleged violations the Commission shall separately determine whether clear and convincing evidence supports each violation.

B. If the Commission determines that no allegations in the complaint were proved, the Commission shall:

1. Issue an order that the complaint is dismissed because no allegations in the complaint were found to have been proven;
2. Provide notice of the determination of an unidentified elected officer at a regular public meeting of the City Council; and
3. Provide written notice of the determination to the named elected official and the first named complainant on the complaint.

C. If the Commission determines that one or more of the allegations in the complaint were proved, the Commission shall:

1. Prepare written summary findings and a recommendation for the City Council:
 - a. Listing the name of each complainant and the name of the subject elected officer;
 - b. For each allegation that was proven:
 - 1) Provide the reference to the Municipal Officers' and Employee's Act;
 - 2) Summarize the evidence supporting a violation by clear and convincing evidence;
 - 3) Make factual findings; and
 - c. Recommend appropriate action to the City Council.
2. Notify the named elected officer and the first complainant on the complaint of the written summary findings and recommendation for the City Council; and
3. Orally report the summary findings and recommendation to the City Council in a regular meeting of the City Council.

D. If the Commission finds a violation of the Municipal Officers' and Employee's Ethics Act, the Commission may recommend to the City Council any appropriate action or remedy, including but not limited to censor, reprimand, additional ethics training, or removal from office. The Commission's recommendation may depend on the severity of the violation, the elected officer's intent, any history or pattern of abuse by the named elected officer, and any economic or other benefit received by the named elected officer.

A. Upon receipt of any finding and recommendation by the Commission, the City Council shall review the recommendation and take action at its discretion.

B. The elected officer referred for a violation may not participate in the Council's deliberation or cast a vote as the Council decides whether to take action and which action to take.

2.10.140 – Knowingly Filing of False Complaint

A. Any person who files a complaint against an elected officer pursuant to this chapter, knowing that such complaint is frivolous, malicious, false, or otherwise without merit, shall be guilty of a class B misdemeanor.

2.10.150 – Annual Commission Report

A. The Commission shall prepare, on an annual basis, a summary report that contains:

1. A general description of the activities of the Commission during the past year;
2. The number of ethics complaints filed with the Commission;
3. The number of ethics complaints dismissed; and
4. An executive summary of each complaint where the Commission found a violation of the Municipal Officers' and Employees' Ethics Act.

B. The annual report of the Commission shall be filed with the City Council and with the Mayor and shall be a public record.

This ordinance will take effect upon execution by the Mayor or after fifteen days from transmission to the office of the Mayor if neither approved nor disapproved by the Mayor.

Dated this _____ day of _____, 2012.

By the City Council:

Irvin H. Jones, Jr. Council Chair